

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

Miyano Machinery USA Inc.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. <b>08 C 526</b>
	)	
MiyanoHitec Machinery, Inc.,	)	Hon. Virginia Kendall
Thomas (“Tom”) Miyano, a/k/a Toshiharu Miyano	)	
and Steven Miyano, a/k/a Shigemori Miyano,	)	Magistrate Judge Nolan
Defendants	)	
	)	
	)	<b>JURY TRIAL DEMANDED</b>
	)	
MiyanoHitec Machinery, Inc.,	)	
Thomas (“Tom”) Miyano, a/k/a Toshiharu Miyano	)	
and Steven Miyano, a/k/a Shigemori Miyano,	)	
Counterclaim-Plaintiffs	)	
	)	
v.	)	
	)	
Miyano Machinery USA Inc. and	)	
Counterclaim-Defendant	)	
Miyano Machinery Inc.,	)	
Third-Party Defendant	)	

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**PLAINTIFF’S REPLY TO DEFENDANTS’ RESPONSE TO MOTION FOR PROTECTIVE ORDER AND ORDER COMPELLING THE RETURN OF PRIVILEGED DOCUMENTS**

Currently pending before this Court are the following three motions:

- George Kobayashi and Masuda, Funai, Eifert & Mitchell’s (“MFEM”) Motion to Quash the Subpoena or For Entry of a Protective Order (Document #45);
- Defendants’ Motion to Compel Production, to Pierce Claimed Attorney-Client and Work Product Privilege and to Enforce Subpoena (Document #84); and
- Plaintiff’s Cross-Motion for a Protective Order and an Order Compelling the Return of Privileged Documents (Document #92).

On May 27, 2008, Plaintiff presented its claw-back motion (#92). At the presentment hearing, this Court asked if further briefing on the claw-back motion would be necessary, given the briefing on Defendants' Motion to Compel (Document #84) and MFEM's Motion to Quash (Document #45). The parties agreed that need for such briefing would be very limited. The Court invited Defendants to address the issues presented in Plaintiff's claw-back motion within a header in their reply brief to be filed on May 28, 2008. The Court also gave Plaintiff this opportunity to reply. The Court entered a minute order reflecting these directives on May 28, 2008 (Document #98).

Defendants filed their reply brief in the wee hours of May 29, 2008 with no header or argument as invited. Defendants' reply brief does not address the issues raised in Plaintiff's claw-back motion, namely: (1) that "Exhibit L" provided for *in camera* review with Defendants' Motion to Compel (Document #84) is a privileged document, protected under the attorney-client and work product privileges, (2) that the document was inadvertently produced, and (3) that under Federal Rule of Civil Procedure 26(b)(5)(B) and 26(c) the document must be returned and protected from further use or disclosure. Rather, Defendants in their reply present entirely new facts and arguments in attempt to support their Motion to Compel Production, to Pierce Claimed Attorney-Client and Work Product Privilege and to Enforce Subpoena (Document #84).

In addition to denying Defendants' Motion to Compel, Plaintiff asks that this Court GRANT its claw-back motion (Document #92) and enter a protective order and an order compelling the return of "Exhibit L" as set forth therein.

Respectfully submitted,

Dated: May 29, 2008

/s/ Edward Manzo

One of the Attorneys for Plaintiff

Edward D. Manzo	I.D. # 03124728
Joel Bock	I.D. # 00239984
Louis Alex	I.D. # 06274458
Jason Smalley	I.D. # 06287426
COOK, ALEX, MCFARRON, MANZO,	
CUMMINGS & MEHLER, LTD.	
200 West Adams Street, Suite 2850	
Chicago, IL 60606	
Phone: (312) 236-8500	
Fax: (312) 236-8176	

### CERTIFICATE OF SERVICE

The undersigned declares that he/she is over the age of 18 years, not a party to this action, and employed in the County of Cook, by Cook, Alex, McFarron, Manzo, Cummings & Mehler, Ltd., Attorneys at Law, 200 West Adams Street, Suite 2850, Chicago, Illinois 60606.

On the date listed below, I caused the filing of the foregoing **Plaintiff's Reply to Defendants' Response to Motion for Protective Order and Order Compelling the Return of Privileged Documents** with all its attachments and exhibits. I caused the service of these aforementioned documents on the following individuals, as addressed below, by the means indicated, and on the date listed below:

Geoffrey A. Baker  
Geoffrey D. Smith  
DOWELL BAKER, P.C.  
201 Main Street, Suite 710  
Lafayette, Indiana 47901  
(765) 429-4004 telephone  
(765) 429-4114 facsimile  
gabaker@dowellbaker.com

Robert M. Karton  
ROBERT M. KARTON, LTD.  
77 W. Washington St., Suite 900  
Chicago, Illinois 60602-2804  
(312)214-0900 telephone  
(312)214-4230 facsimile  
robert@karton.us

Vernon W. Francissen  
FRANCISSEN PATENT LAW, P.C.  
53 W. Jackson Blvd.,  
Suite 1320  
Chicago, Illinois 60604  
(312)294-9980 telephone  
(312)275-8772 facsimile  
vern@francissenpatentlaw.com

Nancy E. Sasamoto  
Steven L. Katz  
George H Kobayashi  
MASUDA, FUNAI, EIFERT & MITCHELL, LTD.  
203 N. LaSalle St.  
Suite 2500  
Chicago, IL 60601  
312-245-7500 telephone  
nsasamoto@masudafunai.com  
skatz@masudafunai.com  
gkobayashi@masudafunai.com

X (BY ELECTRONIC MEANS) I caused this document to be electronically mailed (emailed) to Vernon W. Francissen, at the address shown above.

X (BY ELECTRONIC MEANS) I cause each such document to be sent by electronic means through the Electronic Court Filing system to Nancy Sasamoto, Steven Katz, George H Kobayashi, Geoffrey A. Baker, Geoffrey D. Smith and Robert M. Karton at the address shown above, pursuant to LR 5.9.

Executed on May 29, 2008 at Chicago, Illinois.

Signed: /s/ Edward Manzo